

REMARKS/ARGUMENTS

This Amendment Response is promptly filed to place the above-referenced case in condition for immediate allowance.

The status of the claims is as follows:

Cancelled: 9

Amended: 1, 3, 4, 6, 7, 8, 10, 18 and 20;

Added: 22

Currently outstanding: 1, 8, 10-22.

No new matter has been added to the application. From the outstanding office action, Claims 1-21 are rejected under 35 U.S.C. 103A as being unpatentable over the Antinoro '996 patent.

Applicant's counsel and the examiner conducted several telephonic interviews since the issuance of the office action. During the course of those telephonic interviews, and the examiner acknowledged that the Antinoro '996 patent did not disclose the use of degermed grain and/or corn. Additionally, the examiner indicated that such "degermed" claims would be allowable and while the issuance of a supplemental office action was discussed, it was ultimately resolved that Applicant should respond to the present application as outstanding.

Reconsideration is respectfully requested. Applicant has amended the claims to reflect subject matter indicated as is allowable, namely the use of degermed grain. No narrowing amendment to conform what statute has been made in the application by the amendments to the claim.

PATENT

Appl. No. 10/774,707

Amdt. dated March 7, 2005

Reply to Office action of Dec. 10, 2004

04-13161

The Antinoro '996 patent makes no reference to degermed or embryo free grain. As a result, Applicant believes that the rejection based on the Antinoro '996 reference is overcome. Furthermore, Applicant has disclosed in his specification that degermed, segmented, kiln dried, and/or embryo-free grain provides an advantage as set forth in the original application on page 5 in the paragraph beginning on line 2, although the claims are of varying scope. However, Applicant believes that no advantage, used for a particular purpose, or a solution of a stated problem is requisite under the applicable statute. Statutes which are directed to novelty, no obviousness, and utility only.

As the claims are now all directed to degermed grain, and as the Antinoro '996 patent is believed not to make obvious, Applicant's claims as amended, Applicable believes that the application is in condition for allowance.

No new matter has been added to the application.

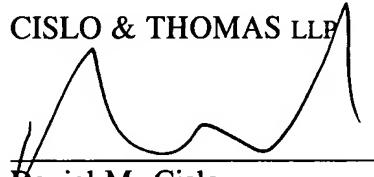
In view of the above, the Examiner is respectfully requested to reconsider his position in view of the remarks made herein and the structural distinctions now set forth. The Examiner's rejection of the outstanding claims is believed to no longer apply. It is now believed that this application has been placed in condition for allowance, and such action is respectfully requested. Prompt and favorable action on the merits is earnestly solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The statements made herein with respect to the disclosures in the cited references represent the present opinions of the undersigned attorney. In the event that the Examiner disagrees with any of such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective references providing the basis for a contrary view.

If the Examiner believes that a telephone or other conference would be of value in expediting the prosecution of the present application, enabling an Examiner's amendment or other meaningful discussion of the case, Applicant invites the Examiner to contact Applicant's representative at the number listed below.

With the above-referenced changes, it is believed that the application is in a condition for allowance; and Applicant respectfully requests the Examiner to pass the application on to allowance. It is not believed that any additional fees are due; however, in the event any additional fees are due, the Examiner is authorized to charge Applicant's Attorney's Deposit Account No. 03-2030.

Respectfully submitted,

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Date: March 7, 2005

DMC/ASJ/bjs

Enclosure
Acknowledgement Postcard

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